Inter-Regional Disposal & Recycling, Inc., a successor to Denville Disposal, t/a Carmine Forgione & Sons, Inc. *and* Teamsters Local Union No. 945, International Brotherhood of Teamsters, AFL–CIO and League of International Federated Employees, Party in Interest. Case 22–CA–25305

March 19, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On June 16, 2003, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision* and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions except as modified below, and to adopt the recommended order as modified and set forth in full below. We correct the judge's remedial order to state that the Charging Party, Teamsters Local 945 (Local 945), became the bargaining representative for the Respondent's drivers and helpers only at the terminal the Respondent acquired in Riverdale, New Jersey.[2]

During the time frame addressed in the complaint, the Respondent, a waste-disposal trucking service owned by Marc Savino, had a collective-bargaining agreement with Local 890 of the League of International Federated Employees (LIFE) covering the employees at its original terminal in Elizabeth, New Jersey. On July 17, 2002,[3] Savino finalized an agreement with Michael DiMarco, the owner of Denville Disposal (Denville), to purchase all the nonreal assets at Denville's terminal in Riverdale, about 40 miles away from Elizabeth. At the time of this agreement, Denville's drivers and helpers were represented by Local 945, which had a collective-bargaining agreement with Denville.

The acquisition took effect on July 18, and Savino hired 10 former Denville employees to work at the Riverdale terminal. There is no dispute that until July 29—the last date on which the complaint alleges misconduct—the Respondent continued to operate the former Denville terminal as before, or that the former Denville employees continued to drive the same pickup routes they had previously driven. The judge accordingly found that from July 18 to 29, the Respondent "essentially continued the same business as Denville." The judge also found from the credited evidence that the Respondent's former Denville employees outnumbered its other employees at the Riverdale terminal during that period. We therefore agree with the judge that the Respondent was the successor to Denville, that Local 945 became the bargaining representative for the Respondent's drivers and helpers at Riverdale, and that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Local 945 over those employees' terms of employment.[4]

We do not, however, adopt the judge's conclusion of law or recommended order designating Local 945 as the exclusive bargaining representative of a unit of "[a]ll drivers and helpers employed by the Respondent at its Riverdale *and Elizabeth*, N.J. facilities." (Emphasis added.) Neither Local 945's written demand for recognition nor its subsequent unfair labor practice charges stated that it was seeking recognition for employees elsewhere than at Riverdale. Similarly, the General Counsel's complaint alleged the unit at issue to be "[a]ll drivers, mechanics and helpers employed by the Employer at its Riverdale, New Jersey facility."[5] Nor did

* We correct three typographical errors in the judge's decision by substituting "Marc Savino" for "Mark Savino", "Michael DiMarco" for "Michael DeMarco", and "Randy Pritchard" for "Randy Prichard".

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The General Counsel obtained a 10(j) order from the U.S. District Court of New Jersey requiring the Respondent to recognize and bargain with Local 945, pending the disposition of this case. That order expired on December 16, 2003.

[3] All subsequent dates are in 2002.

[4] See *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987); *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). For the reasons explained by the judge, we also adopt his findings that the Respondent violated Sec. 8(a)(2) and (1) by attempting to impose LIFE as the bargaining representative of its Riverdale drivers and helpers; that Frank Savino was an agent of the Respondent; and that the Respondent, through Frank Savino's actions, violated Sec. 8(a)(3) and (1) by discharging nine of its former Denville employees for engaging in a recognition strike on July 29.

[5] In responding to the Respondent's exceptions, the General Counsel does not dispute the judge's finding that the successor bargaining unit consists of employees at both terminals. However, his briefs to the

the judge describe a factual or legal basis for treating the Elizabeth bargaining unit as having been merged with the unit at Riverdale during the period from July 18, the date of the Denville acquisition, to July 29—the only time frame addressed in the complaint.[6]

The Respondent contends that its acquisition of the Riverdale terminal was a "consolidation" with its Elizabeth terminal, that the resulting bargaining unit included employees at both terminals, and that LIFE is the consolidated unit's bargaining representative. However, these contentions of law are based on Savino's factual contentions (1) that he did not intend to continue performing Denville's preexisting municipal contracts after July 31, 2002; (2) that he hired six of the former Denville employees only as temporaries, to be let go within 2 weeks; and (3) that he therefore did not hire his "substantial and representative complement" of permanent employees until after that date. On the credited evidence, the judge rejected each of these factual contentions. We agree.

There is also no dispute that during July the Respondent continued its preexisting operations at the Elizabeth terminal, the two terminals continued to operate separately, and none of the former Denville employees was transferred to Elizabeth. There is consequently no factual basis on this record for treating the Respondent's acquisition of the Riverdale terminal as a consolidation or merger with the terminal at Elizabeth.

We will therefore correct the judge's order to limit the scope of Local 945's bargaining unit to the Respondent's drivers and helpers at the Riverdale terminal.[7]

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge as modified below and orders that the Respondent, Inter-Regional Disposal & Recycling, Inc., a successor to Denville Disposal, t/a Carmine Forgione & Sons, Inc., Elizabeth and Riverdale, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and assisting Local 890 of the League of International Federated Employees as the exclusive representative of its unit employees in the unit defined below.

(b) Refusing to bargain collectively with Local 945, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of its unit employees at the unit defined below.

(c) Discharging and refusing to reinstate lawfully striking employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain with Local 945, International Brotherhood of Teamsters, as the exclusive bargaining representative of the employees in the following appropriate unit:

> All drivers and helpers employed by Respondent at its Riverdale, New Jersey facility.

(b) Make employees whole for any losses suffered as a result of its failure to bargain with Local 945, International Brotherhood of Teamsters, as exclusive bargaining representative for that unit.

(c) Make whole Sam Brown, Art Burney, Albert Caltagirone, Cesar Mieses, Norris Nero, Bruce Pullis, Efrain Rodriguez, Frank Rooney, and John Van Houton for any loss of earnings, with interest, in the manner set forth in the remedy section of the judge's decision.

(d) Within 14 days from the date of this Order, offer immediate and full reinstatement to those of the above employees who have not been offered reinstatement. Reinstatement shall be to the employees' former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after July 29, 2002.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the above-named employees in writing that this has been done and that the discharges will not be used against them in any way.

(f) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records

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judge and to the Board do not appear to contend that the unit actually includes any Respondent employee who did not work at Riverdale.

[6] On October 11–13, almost 3 months after the Respondent's acquisition of the Denville operation, the Riverdale terminal was closed and all of the Respondent's operations were consolidated at the Elizabeth terminal. However, events subsequent to July 29, including the October consolidation, were neither addressed in the complaint nor litigated as issues at the hearing. We therefore make no findings with respect to those events, and the scope of our order is confined to the unfair labor practices that occurred by July 29.

[7] We will similarly correct the order to find that the Respondent violated Sec. 8(a)(2) and (1) by recognizing and assisting LIFE at the Riverdale terminal. The 8(a)(2) violation does not extend beyond that. In addition, because the complaint did not allege that the Respondent was required to accept the pre-acquisition terms and conditions of employment that existed at the Riverdale terminal, and the General Counsel has not contended to the judge or to the Board to that effect, we will delete that requirement from the order.

and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Riverdale facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 18, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 19, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT recognize and assist the League of International Federated Employees as the representative of our bargaining unit employees at our Riverdale facility.

WE WILL NOT refuse to bargain with Local 945, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of our bargaining unit employees at our Riverdale facility.

WE WILL NOT discharge and refuse to reinstate lawfully striking employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, bargain with Local 945, International Brotherhood of Teamsters, as the exclusive bargaining representative of the employees in the following appropriate unit:

All drivers and helpers employed by us at our Riverdale, New Jersey facility.

WE WILL make employees whole for any losses suffered as a result of our failure to bargain with Local 945, International Brotherhood of Teamsters as your exclusive bargaining representative.

WE WILL make whole Sam Brown, Art Burney, Albert Caltagirone, Cesar Mieses, Norris Nero, Bruce Pullis, Efrain Rodriguez, Frank Rooney, and John Van Houton, for any loss of earnings resulting from their unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer immediate and full reinstatement to the above employees who have not been offered reinstatement. Reinstatement shall be their former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other

rights and privileges, discharging, if necessary, any replacements hired on or after July 29, 2002.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and WE WILL, within 3 days thereafter, notify the discharged employees in writing that this has been done and that the discharges will not be used against them in any way.

INTER-REGIONAL DISPOSAL & RECYCLING, INC.

Marguerite Greenfield, Esq., for the General Counsel.
Steven Weinstein, Esq., for the Respondent.
Michael McLaughlin, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Newark, New Jersey, on February 11, 12, 13, 20, 25, and 26, 2003. Upon a charge filed on July 24, 2002,[1] and amended on September 26, a complaint was issued on November 27, alleging that Inter-Regional Disposal & Recycling, Inc. (Respondent or Inter-Regional) violated Section 8 (a)(1), (2), (3), and (5) of the National Labor Relations Act, as amended (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed on May 5, 2003.

Upon the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with offices and places of business in Riverdale and Elizabeth, New Jersey, has been engaged in the collection, transport, and disposal of waste. It has admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that IBT Local 945 and League of International Federated Employees (LIFE) are labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

In July 2001 Mark Savino (Mark) purchased the assets of Carmine Forgione & Sons, Inc. In March 2002 an amendment to the certificate of incorporation was filed changing the name of the company to Inter-Regional Disposal & Recycling, Inc. Mark is the sole shareholder, officer, and director of the company.

Michael DeMarco had been the owner of Denville Disposal. In August 2001 De Marco contacted Mark to inquire whether he was interested in buying Denville. Negotiations proceeded and an agreement in principle was reached in December 2001. The closing on the sale of assets took place on July 17, 2002, with the sale to take effect on July 18.

The employees of Denville had been represented by Local 945, IBT. A collective-bargaining agreement covering Denville's drivers and helpers was entered into with Local 945 for the term July 1, 1999 to June 30, 2004. On July 19, 2002, Local 945 wrote to Inter-Regional requesting recognition. Respondent refused to recognize Local 945. Instead, it took the position that its employees were already represented by Local 890, LIFE and that there was an existing collective-bargaining agreement between itself and Local 890. On July 29, Local 945 and many of the former Denville employees went out on strike.

2. Activities of Frank Savino

Frank Savino (Frank) is Mark's father. Frank had been the owner of a waste dsposal business in New York City until 1998. Mark testified that until the agreement in principle with Denville was reached, Frank was not involved in the negotiations. DeMarco testified that at one of the negotiating sessions Frank asked whether DeMarco could lower the price. DeMarco testified that "when Mark brought his father there, I felt obligated to give him a better price." DeMarco testified that because he and Frank "spoke the same language" and "had the same background" that "I took $25,000 off."

Frank testified that he visited Denville approximately six times prior to July 17, "to advise my son of the condition of the equipment." Mark testified that he asked his father advice on the equipment he was purchasing and that his father examined the trucks and test-drove one of them. Bruce Pullis, a former Denville driver, appeared to me to be a credible witness. He testified that prior to the sale he saw Frank walking around the yard and sitting at a desk in the office. Sam Brown, another former Denville driver, testified that prior to the sale he saw Frank in the office "doing paperwork" and on two occasions he saw Frank driving Denville trucks.

3. Activities during strike

The strike began early on the morning of July 29. Gerard Guyre, president of Local 945, testified that at approximately 7 a.m. Mark approached the picket line and asked "if the guys were coming to work." Guyre replied that they would come to work "if you recognize 945." Guyre testified that Mark then said, "if they don't come to work, they're all fired." Brown testified that on the second day of the strike Mark told him "you're gonna be replaced." Brown conceded that in his affidavit he stated that Mark said, "anyone who doesn't go to work, they will be replaced by other help and they will be out of a job." Mark testified that he approached the line around 6:30 a.m. and told the strikers to "come back to work." He denied that he told them that if they didn't return to work they would be fired. Brown also testified that later in the week Mark telephoned him and said, "we want to sign you up" and that "if you don't come back you're fired." Mark denied that he told Brown that he was fired.

[1] All dates refer to 2002 unless otherwise specified.

Mark testified that on the morning of the strike he called his father for advice. Frank approached the line at around 7 a.m. Mark was standing about 30 feet away from his father when Frank spoke to one of the strikers, Randy Prichard. Bruce Pullis testified that Frank "put his arm around" Prichard and persuaded him to go back to work. A short time later Frank returned to the line and "grabbed" Efrain Rodriguez by the arm and said "come on, you're going in." Rodriguez refused. Guyre testified that Rodriguez said, "I'm not crossing the picket line", after which Frank replied, "then you have been fired. Then, you all have been fired." Rodriguez testified that after Prichard went with Frank, Frank came back driving a truck with Prichard as a passenger. Frank then tried to get Rodriguez to cross the picket line. Rodriguez testified that when he refused, Frank said that "I was fired and . . . they were all fired."

4. Bargaining unit employees

As stated earlier, the collective-bargaining agreement between Denville and Local 945 covered drivers and helpers. It did not cover mechanics. Fourteen former Denville employees were hired by Respondent on July 18. They were: Caltagirone, Lewis, Mieses, Nero, Bruce Pullis, Rodriguez, Rooney, Van Houton, Brown, Prichard, Burney, Denson, Joyner, and Casey Pullis. Inasmuch as Mieses and Joyner were mechanics, they were not in the bargaining unit. The Inter-Regional employees on that date were Bennett, Nyevgen, Vista, Krause, Ortiz, Rajkumar, Kuczek, and Scirica. Kuzczek was a mechanic, Scirica was a salesman, and Vista did not have a commercial driving license.

Respondent contends that certain employees should be considered to be temporary employees because they drove residential routes which were eventually no longer serviced by Respondent. However, these employees were never told that their employment was only temporary. In addition, DeMarco credibly testified that during the negotiations there was never any discussion about Inter-Regional not servicing the residential routes.

B. Discussion and Conclusions

1. Agency status of Frank Savino

The test of whether one is considered an agent is if employees would reasonably believe that the alleged agent was "reflecting company policy and speaking and acting for management." *Waterbed World,* 286 NLRB 425, 427 (1987); *Pitt Ohio Express,* 322 NLRB 867 fn. 2 (1997). The fact that there is a father-son relationship is "one of the facts to be considered in determining apparent authority." *Shen Automotive Dealership Group,* 321 NLRB 586, 594 (1996).

I credit DeMarco's testimony that during negotiations for the purchase of Denville, Frank asked for a reduction in price, which DeMarco agreed to. In addition, prior to the sale, Frank made approximately six visits to Denville, during which he inspected and drove some trucks and spent time in the office. On the day the strike began, Frank appeared at the picket line, and in Mark's presence, induced Randy Prichard to cross the picket line. Frank then returned, driving a truck in which Prichard was a passenger. Soon thereafter Frank attempted to get Rodriguez to cross the line, but he refused. I credit the testimony that Frank then told Rodriguez that he was fired and "they were all fired." I believe that in view of Frank's activities, employees could reasonably believe that Frank was "reflecting company policy and speaking and acting for management." *Waterbed World,* supra. Accordingly, in the circumstances of this case I find that Frank is an agent of Respondent.

2. Discharges

The complaint alleges that on July 29, Respondent discharged 10 employees. General Counsel's brief states that nine employees were discharged on that date. I credit Brown's testimony that Mark approached the line and told the employees that "anyone who doesn't go to work . . . will be replaced by other help and they will be out of a job." Brown testified that in a phone call later in the week Mark told him "if you don't come back, you're fired." I note that in earlier testimony Brown initially used the word "fired." On cross-examination, after being shown his affidavit, Brown conceded that the word "replace" was used. I credit Mark's testimony that he did not tell the employees that they would be fired.

With respect to Frank, I credit the testimony that after Rodriguez refused to cross the picket line, Frank said that "you have been fired . . . you all have been fired." Since I have found that Frank was an agent of Respondent, his statement is attributable to Respondent. In this connection, I note that Inter-Regional's timesheet for August 14 lists Brown, Burney, Caltagirone, Nero, Bruce Pullis, and Van Houton as "terminated employees."

While an employer may replace strikers, it may not terminate them because they engage in protected activity. *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (9th Cir. 1969), cert. denied 397 U.S. 920 (1970). The Board has held that the unlawful discharge of strikers is a violation of Section 8(a) and (3) and "leads inexorably to the prolongation of a dispute." *Vulcan-Hart Corp.,* 262 NLRB 167, 168 (1982), enf. granted in part and denied in part, on other grounds, 718 F.2d 269 (8th Cir. 1983); *Americorp,* 337 NLRB 657 (2002). Accordingly, I find that by discharging nine employees on July 29, because they were engaged in a lawful strike, Respondent has violated Section 8(a)(1) and (3) of the Act.

3. Successorship

In *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 41 (1987), the Supreme Court stated:

> If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of Section 8(a)(5) is activated.

See *NLRB v. Burns Security Services,* 406 U.S. 272 (1972).

There is no question that Inter-Regional essentially continued the same business as Denville. The question is whether a majority of Respondent's employees on the date of the sale were formerly bargaining-unit employees of Denville.

Respondent argues that those employees who drove residential routes should be considered as temporary employees and not be included in the unit. The employees were never told that they were temporary. A temporary employee not entitled to be included in a bargaining unit is one who is hired for a "definite

limited period." *Garney Morris, Inc.,* 313 NLRB 101, 120 (1993). Where employees were hired for a "particular job" and were told that they were "merely temporary employees", they were excluded from the unit. *E.F. Drew & Co.*, 133 NLRB 155, 157 (1961). I have credited DeMarco's testimony that during the negotiations for the sale of Denville there was no discussion about Inter-Regional not servicing the residential routes. In addition, there is nothing in the documents submitted to the various municipalities that Respondent would be servicing those routes only on a temporary basis. Indeed, the Resolution of the Township of Verona refers to the assignment to Respondent being conditioned upon a performance bond covering the period July 1, 2002 through December 31, 2003, "which consists of 18 months and being the balance of the existing contract."

As stated earlier, Mieses, Joyner and Kuzcek were mechanics and thus not in the bargaining unit. Scirica was a salesman and Vista, Mark's cousin, did not have a commercial driver's license. While Respondent contends that Rodriguez should not be included, I find that he worked for Respondent on July 18 and 19. On July 25, he was assigned by Frank to do the Verona run. Respondent contends that Lewis did not work for Inter-Regional. While Brown testified that he saw Lewis work at Respondent either July 18 or 19, I believe the most that can be shown is that Lewis was a "casual" employee. I am not including him in the unit. General Counsel objects to the inclusion of Rajkumar and Ortiz. I credit Mark's testimony that Rajkumar was a helper. On the other hand, while Mark testified that Ortiz was a driver there is no evidence of that. Ortiz' name appeared on no dump tickets and there was no personnel file for him. Accordingly, I am excluding Ortiz from the unit.

Based on the above, 10 bargaining-unit employees who formerly worked for Denville became Inter-Regional employees. They are: Brown, Burney, Caltagirone, Denson, Nero, Bruce Pullis, Prichard, Rodriguez, Rooney, and Van Houton. They joined 4 Inter-Regional employees: Bennett, Nyevgen, Krauve, and Rajkumar. Thus, of a total of 14 employees in the unit, 10 employees, or 71 percent, were former Denville employees. Since Respondent hired a majority of its predecessor's employees, pursuant to *Fall River*, supra, it was required to bargain with Denville's union, Local 945. Its failure to do so is a violation of Section 8(a)(5) of the Act. Concomitantly, its continuation to recognize LIFE after July 18, as its collective-bargaining representative is a violation of Section 8(a)(2).

4. Physical force

The complaint alleges that on the first day of the strike Frank physically forced employees to abandon the strike. Caltagirone testified that Frank "tried to pull Randy in to go to work" and then "physically grabbed" Rodriguez' arm to get him to cross the picket line. Pullis testified that Frank "put his arm around" Prichard and "told him to get in the car." Brown testified on cross-examination that Frank "put his arm . . . on Randy like they were buddy-buddies." I find that General Counsel has not shown by a preponderance of the evidence that Frank "physically forced" employees to abandon the strike. Frank approached the picket line and put his arm around Prichard, whom he previously knew. I credit Brown's testimony that this was done in a friendly manner. Accordingly, the allegation is dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 945 IBT and LIFE are labor organizations within the meaning of Section 2(5) of the Act.
3. Local 945 is the exclusive representative of the following appropriate unit of employees:

> All drivers and helpers employed by Respondent at its Riverdale and Elizabeth, NJ facilities.

4. By discharging and refusing to reinstate striking employees, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.
5. By recognizing and assisting LIFE after July 18, 2002, as the exclusive representative of its employees, Respondent has violated Section 8(a)(1) and (2) of the Act.
6. By failing and refusing to bargain collectively with Local 945 as the exclusive representative of its unit employees, Respondent has violated Section 8(a)(1) and (5) of the Act.
7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
8. Respondent did not violate the Act in any other manner alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain action designed to effectuate the policies of the Act.

Respondent, having discharged certain striking employees, I shall order Respondent to offer immediate and full reinstatement to those employees who have not yet been reinstated. Reinstatement shall be to the employees' former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing, if necessary to effectuate such reinstatement, any person hired by Respondent on or after July 29, 2002. In addition, Respondent shall make whole said employees for any loss of earnings and benefits they may have suffered from the time of their discharges to the date of Respondent's offers of reinstatement. I shall also order that Respondent bargain collectively with Local 945 as the exclusive representative of its unit employees. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). Fund contributions, if any, shall be computed in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216 fn.7 (1979). See also *Kraft Plumbing & Heating,* 252 NLRB 891 (1980), enfd. mem. 661 F. 2d 940 (9th Cir. 1981).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the

ORDER

The Respondent, Inter-Regional Disposal & Recycling, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and assisting LIFE as the exclusive representative of its unit employees.

(b) Refusing to bargain collectively with Local 945, IBT as the exclusive collective-bargaining representative of its unit employees.

(c) Discharging and refusing to reinstate lawfully striking employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, bargain with Local 945, IBT as the exclusive bargaining representative of the employees in the following appropriate unit:

> All drivers and helpers employed by Respondent at its Riverdale and Elizabeth, NJ facilities.

(b) Make whole employees and benefit funds for any losses suffered as a result of its failure to abide by the collective-bargaining agreement with Local 945, with interest, in the manner set forth in the remedy section of this decision.

(c) Make whole Sam Brown, Art Burney, Albert Caltagirone, Cesar Mieses, Norris Nero, Bruce Pullis, Efrain Rodriguez, Frank Rooney, and John Van Houton for any loss of earnings, with interest, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, offer immediate and full reinstatement to those of the above employees who have not been offered reinstatement. These are: Sam Brown, Art Burney, Albert Caltagirone, Norris Nero, Bruce Pullis, Efrain Rodriguez, and John Van Houton. Reinstatement shall be to the employees' former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after July 29, 2002.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(f) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facilities copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 18, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 16, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT recognize and assist League of International Federated Employees as the exclusive representative of our bargaining unit employees.

WE WILL NOT refuse to bargain with Local 945, IBT as the exclusive collective-bargaining representative of our bargaining unit employees.

WE WILL NOT discharge and refuse to reinstate lawfully striking employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, upon request, bargain with Local 945, IBT as the exclusive bargaining representative of the employees in the following appropriate unit:

All drivers and helpers employed by us at our Riverdale and Elizabeth, NJ facilities.

WE WILL make whole employees and benefit funds for any losses suffered as a result of our failure to abide by the collective-bargaining agreement with Local 945, IBT, with interest.

WE WILL make whole Sam Brown, Art Burney, Albert Caltagirone, Cesar Mieses, Norris Nero, Bruce Pullis, Efrain Rodriguez, Frank Rooney, and John Van Houton, for any loss of earnings, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Brown, Burney, Caltagirone, Nero, Bruce Pullis, Rodriguez, and Van Houton, immediate and full reinstatement to their former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements hired on or after July 29, 2002.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges and WE WILL, within 3 days thereafter, notify the discharged employees in writing that this has been done and that the discharges will not be used against them in any way.

INTER-REGIONAL DISPOSAL & RECYCLING, INC.